

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4199 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NAVI MENGANI JUTH SEVA SAHAKARI MANDLI LTD.

Versus

IQBAL GANIBHAI DAKORA

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Appearance:

MR DM THAKKAR for Petitioner

MR HK RATHOD for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/97

ORAL JUDGEMENT

1. By way of this special civil application under Article 226 of the Constitution, the petitioner seeks to question the legality and validity of the award passed by the Labour Court, Rajkot dated 22-1-1992 in Reference (LCR) No.850/83 awarding reinstatement with 40% backwages to the respondent.

2. The petitioner is a service rendering cooperative

society which is registered under the provisions of Gujarat Cooperative Societies Act. The society is rendering the loan service and supply of chemical fertilizer, seeds etc. to the members. The respondent-workman was appointed as peon-cum-clerk by the petitioner society and was looking after the distribution of chemical fertilizer, crude oil, seeds etc.. The respondent workman who was in absolute charge of the said department, took advantage and misappropriated certain stock and money in the course of employment. That misconduct of the respondent-workman came to the notice of the petitioner when the charge of stores department was taken over by the society in pursuance of panch on 20-3-1983 when the shortage of stock to the tune of Rs.2279-85 was noticed. Further misconduct of the respondent regarding the misappropriation of stock and money was also noticed. Taking into consideration the seriousness of the misconduct of misappropriation of property and funds of the society, the respondent-workman was terminated from services under the order dated 2-1-1983. He raised an industrial dispute which has been referred to the Labour Court and under the impugned award, he was ordered to be reinstated back in the service with 40% backwages.

3. The learned counsel for the petitioner contended that the Labour Court has committed serious error of jurisdiction in passing the award of reinstatement of the respondent with 40% backwages when it held that the respondent-workman has committed misappropriation in the establishment. The Labour Court has also accepted as a fact that the services of the respondent-workman were terminated on account of loss of confidence. Not only that, the Labour Court has further accepted that the workman has committed all lapses, but still by taking it to be a first lapse of the workman, the order of reinstatement has been made.

4. On the other hand, the counsel for the respondent-workman submitted that the Labour Court has passed a reasoned order and this Court sitting under Article 226 of the Constitution may not interfere with the same. It has next been contended that the respondent has no objection in case the award of backwages is not maintained. Lastly, the counsel for the respondent contended that this Court may award some other penalty other than termination of services.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. The Labour Court while dealing with the industrial dispute is not distributing the charity. Not only this, but sympathies and equities should not be a consideration for awarding the reinstatement in the matter where the Labour Court has found it to be a case of misappropriation in the establishment. The respondent workman has committed misappropriation of funds and stock of the establishment and that misconduct has been accepted by the Labour Court. Once the misappropriation of funds and stock of the society by the respondent has been accepted then the Labour Court has no option to give the charity to the respondent and by taking into consideration the fact that it is only the first lapse the award of reinstatement could not have been passed. These are the serious misconducts and I fail to see how it has felt to be justified to give the licence to such workman to commit further misappropriation in the society. This approach of the Labour Court is against the public interest and such a person instead of dealing with him severely has been rewarded for misappropriation of funds and stock of the establishment. In fact, this award is not an award of reinstatement simpliciter, but it is a reward for the misconduct of misappropriation of funds of the society. In the case of Narayan Dattatraya Ramteerthakhar vs. State of Maharashtra reported in 1997 (1) SCC 299, their Lordships of the Supreme Court held that in the cases where the employees have committed misappropriation of public money then the removal from the services is an appropriate order. In this case, even lesser punishment has been given and the respondent's services were terminated by the petitioner. In view of the fact that in the case of misconduct of misappropriation only punishment would have been removal or dismissal from services, the contention made by the counsel for the respondent deserves no acceptance.

7. In the result, this special civil application succeeds and the award of the Labour Court dated 22-1-1992 passed in Reference (LCR) No.850/83 is quashed and set aside. Rule is made absolute.

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